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ABSTRACT

This report contains proposed regulations of student conduct constituting serious misbehavior, and includes written procedures for handling regulation violations. The code is divided into three parts: (1) eight rules that prohibit student conduct qualifying as a major offense and that stipulate long term suspension or expulsion for violation of these rules, (2) a 20-section code for trying alleged violations of the rules, and (3) provisions for removing dangerous students. Following most of the rules and procedural sections are comments that clarify the intent of a particular rule or section. Optional rules or sections are provided when a reasonably attractive alternative exists. (Author)

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STUDENT SUSPENSIONS AND EXPULSIONS

Proposed School Board Codes Prohibiting Serious Student Misconduct and Establishing Procedures for Dealing with Alleged Violations

By ROBERT E. PHAY

and JASPER L. CUMMINGS, Jr.

EA 003 312

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Foreword

In addressing the State School Boards Convention on the subject of student unrest last November, I promised to develop a model school board code on serious student misconduct. With the able assistance of Jack Cummings, a third-year law student at Yale University, I have done so, and it is now offered for your use.

Since both authors have been trained in the law and not school administration, we thought it essential that the code be read and criticized by teachers, school principals, superintendents, and board members before we published it. Accordingly, it was well read as it went through numerous drafts. In addition, a group of school administrators in a school law class at Western Carolina University examined it section by section. We are indebted to all of these people, to the State Board of Education, to the State Department of Public Instruction, to the Attorney General's Office, to the State School Boards Association, and to others who have taken the time to read the code and comment on it. Although we take full responsibility for its provisions, the advice that we have received has been essential to its development.

Experience with this code will inevitably demonstrate need for change or modification. We welcome any suggestions for change and would appreciate hearing from you.

Robert E. Phay
Associate Professor of
Public Law and Government

Chapel Hill
November 1970

Introduction

Written school board regulations on student conduct that constitutes serious misbehavior and written procedures for handling violations of those regulations have long been advisable at the junior high and secondary school levels. But they are now becoming a necessity as courts require specificity in rules and certain procedural observances before a long-term suspension or expulsion is imposed.* To guide school boards in developing their written policies, the following code has been written.

The code is divided into three parts. The first part contains eight rules that proscribe certain types of student conduct that represent major offenses and stipulates that violation of these rules may result in a long-term suspension (over five days) or expulsion. The second part sets out a procedural code of twenty sections for trying alleged violations of the rules. Part III contains provisions for removing dangerous students.

Following most of the rules and procedural sections are comments that explain or clarify the intent of that particular rule or section. In many cases the comments are essential to the meaning of the rule or section and should be adopted with the rule if the rule is adopted. Optional rules or sections are provided when a reasonably attractive alternative exists. When options are listed, the first is preferred by the authors. Bracketed material in a rule or section is an alternative to that part of the rule or section.

Suspension or expulsion of a student is a serious action on the part of the school. (It can, however, be used in a context in which it is not punitive, e.g., to reduce tensions or to provide more time to deal with a problem than is immediately available.) In only a few situations can it be justified. One justified occasion is when a student's continued presence on the school grounds

* A monograph that will soon be published by NOLPE (National Organization on Legal Problems in Education) and the ERIC Clearinghouse on Educational Administration examines the legal aspects of student suspensions and expulsions. A copy may be obtained from NOLPE (825 Western Blvd., Topeka, Kansas) or the Institute of Government.

endangers the proper functioning of the school or the safety or well-being of himself or other members of the school community. Another is that rare instance when the suspension offers the only effective way of both communicating to the student that his conduct was unacceptable and emphasizing to his parents that they must become immediately involved and should accept a greater responsibility in helping the student meet school standards for acceptable conduct. When either of these situations exists, the student should be removed from the school. When neither exists, other ways of dealing with the problem should be sought.

School separation is a poor method of discipline. Students who misbehave usually are students with academic difficulties, and removal from the school almost inevitably adds to their academic problems. Sometimes expulsion is precisely what a delinquent student desires. Also, as the school loses contact with a student and loses its opportunity to work with him to eliminate his antisocial behavior, he may continue his misconduct in a way more dangerous to himself and others.

Thus school suspension should be avoided if possible. This does not mean, however, that a disruptive child should be permitted to remain in the classroom. When the classroom is not the place for him, other provisions should be made for him if possible. For example, a problem child might be put into a special group where closer supervision and greater individual attention is available. Other appropriate community facilities like family service agencies, mental health clinics, or the public health service might be contacted and asked to work with the problem student. We also note that some children disrupt classes because they feel alienated or inadequate. For these children the school should try to offer learning in a way that builds self-confidence rather than destroys self-respect. Classroom instruction should have meaning and relevance to the child's situation. To accomplish this difficult goal, the school may need to make adjustments in the curriculum to provide a more productive experience for the child.

Preventive measures, of which adopting written school codes on misconduct is one example, also need emphasis. The school can do much to eliminate conditions that produce or spark student misconduct. It should communicate to its students that their support and assistance is needed to make school a worthwhile

experience. Students need to see that they benefit from an orderly school operation and that they, as members of the school community, have a responsibility and interest in promoting a good learning environment. School administrators can promote this positive aspect of student behavior by encouraging student participation in school planning, setting up a student committee on student behavior, establishing a school grievance procedure, and giving students a voice in matters concerning student life. Such actions, if not already taken, need to be implemented so that discipline problems can be eliminated before they arise. If a school has only the law and its rules to recommend it, it will surely fail. Rules and codes mean little without the good will and genuine support of the student body.

Because long-term suspensions generally are considered to be undesirable and because constitutional due process requirements have reduced the discretionary powers of school officials to expel and suspend students for long periods, it is recommended that the school board adopt a policy placing some constraints on the principal and superintendent in exercising their broad discretionary power under the statutes to expel and impose long-term suspensions. In listing the categories of misconduct to which disciplinary action is appropriate, the code being suggested is much more specific than the statutes. For example, the North Carolina statute on student suspensions and expulsions, G.S. 115-147, authorizes the principal to suspend for not more than ten days any pupil who "willfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school." We recommend that the school board develop a particularized listing of misconduct deemed serious enough to warrant expulsion or long-term suspension. These specific categories fall well within the broad powers granted in the statutes, but eliminate as grounds per se for expulsion or long-term suspension such vague concepts as immoral or disreputable conduct. Instead, the code specifically prohibits such misconduct as intentional disruption of school processes, possession of dangerous weapons, intentional destruction of property, and willful assault of school employees. The particularized code is necessary to save the statutory language from misuse and to keep school actions taken pursuant to it from being declared invalid on the basis that the statute grants undue discretion and is unconstitutionally vague.

We also recommend that the principal's power of suspension be limited to a maximum of five school days since suspension beyond five days will create academic problems that may make it impossible for the student to be successfully reinstated in the school program. If suspension longer than five days is necessary, the principal may request such a penalty from the superintendent after following the procedure set out in Part II. This reduction in the principal's discretionary power to suspend from the statutory maximum of ten school days will not produce any justiciable conflict between the statute and the code; conflict **would** exist if a code purported to increase a permissible term of suspension **beyond** ten school days. Although there may be a theoretical question whether the school board has power to cut back the principal's power, as a practical matter it will not arise, since principals will necessarily follow board policies on suspension and expulsion or be deemed insubordinate by their boards. As courts have required more and more procedural particularity before a student may be given a long-term suspension or be expelled, adopting and following a procedure similar to that here proposed is probably the best way for the school board to insure that suspension beyond five school days will withstand judicial scrutiny.

To help relate the proposed board policy to existing state statutes, citations to applicable North Carolina statutes have been added in brackets at the end of the comment to the appropriate rule or section.

As noted, the courts also have recognized the severity of school expulsions and have come to consider school attendance to be a right that cannot be denied without due process of law. They have defined due process to mean that such fundamental rights as freedom of the press and of speech cannot be restricted when their exercise does not cause substantial and material disruption to the educational process. For long-term suspensions or expulsions, courts have further said that procedural due process requires the school as a minimum (1) to give adequate notice of the grounds of the charges and nature of the evidence against the accused; (2) unless the student waives it, to conduct a fair hearing; and (3) to take action only when it is supported by the evidence. These substantive and procedural due process requirements have been incorporated into this code.

What School Boards Should Do

We suggest that in developing rules and procedures on serious student misconduct, the school board establish a committee with representation from various constituencies within the secondary school community—students, teachers, and administrators—and that this committee develop its own rules and procedures, using this code as a guide. The work of the committee should then go back to the school board for consideration and possible amendment and final adoption as official school board policy. Once they are adopted, the school board should publicize the policies as widely as possible.

When these things have been done, local boards of education will have clear rules on student misconduct and an orderly and precise procedure for handling it. These rules and procedures will go far in assuring that the student is treated fairly, in minimizing the likelihood of disruption to the educational process from student misconduct, and in complying with the constitutional requirements of due process.

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Definitions

(These definitions are in abbreviated form. For a complete description of the term, see the cited rule or section.)

Appeal — Procedure for review of the hearing board's decision. [See Section 18.]

Closed Hearing — A hearing not open to whoever might want to attend but only to the hearing board, the superintendent of schools, the principal, the student, his parents, and his adult representative. [See Section 15(a).]

Convener — The chairman of the hearing board. [See Section 14(a).]

Expulsion — Denial to a student of the right to attend school and to take part in any school activities for the remainder of the school year.

G.S. — General Statutes of North Carolina.

Hearing — The examination of accounts of the misconduct and the taking of recommendations as to the proper disciplinary action by the hearing board. A hearing is necessary before any punishment more severe than a five-day suspension may be applied to a student unless the student waives the hearing. [See Section 15.]

Hearing Board — The group of persons selected to serve for a school year who hear the accounts, testimony, and recommendations at the hearing and make a report including a recommendation for action to the superintendent. [See Section 14.]

Long-Term Suspension — The denial to a student for a period longer than five school days of the right to attend school and to take part in any school function.

Notice — The written statement the principal must give to the student and his parents whenever he seeks a long-term suspension or expulsion. [See Section 9.]

Parents	The student's parents **or** his legal guardian. [See Section 15(g) for the role of the parents.]
Principal	The school employee bearing that title or a school administrator designated by him to carry out any or all of the functions assigned to the principal in this code.
Principal's Investigation	The inquiry made by the principal upon hearing of the misconduct to find all accounts of the alleged misconduct, to determine the student's culpability, and to decide on the proper disciplinary action.
Representative	An adult serving in place of or in addition to the parents to advise or otherwise assist the student before the hearing board. [See Section 15(h) for complete description of the term.]
Serious Student Misconduct	That misconduct described in the accompanying rules for which the maximum penalty is expulsion.
Short-Term Suspension	The denial to a student of the right to attend school and to take part in any school function for any period up to five school days.
Summary Suspension	A principal's order under his authority in Section 4 that a student immediately leave the school grounds.
Witness	Any person giving information to the hearing board at a hearing. [See Sections 12, 15(e) and (f), and 16.]

PART I

School Board Code Prohibiting Serious Student Misconduct

The following code sets forth school rules prohibiting certain types of student conduct that constitute major offenses. A student found to be in violation of any one of them may receive punishment as severe as a long-term suspension (over five days) or expulsion for the remainder of the school year. Less serious conduct can be dealt with by the principal under the disciplinary authority given to him by the statutes or school board regulations. (See Section 5 at page 27.)

The initial judgment that certain conduct violates one of these rules is made by the principal. He may discipline the student himself, applying punishment up to a five-day suspension from school, and/or refer the student's case to the hearing board with a recommendation for more severe punishment. (See Procedural Code in Part II.) After the hearing, the board will decide whether a rule has been violated. If misconduct is found, the hearing board will recommend to the superintendent what it considers to be the proper disciplinary action, which may range from no action to expulsion. The superintendent is not restricted to the penalty recommended.

Bracketed material in a rule is an option or alternative to that recommended in the rule.

North Carolina statutes that relate to the subject matter dealt with by each rule appear in brackets at the end of the comments. If you are in another jurisdiction, it is essential that your school board attorney examine your state statutes and regulations of the state board of education to be sure that the code you adopt is compatible with them.

RULE 1. DISRUPTION OF SCHOOL

A student shall not by use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance, or any other conduct intentionally cause the substantial and material disruption or obstruction of any lawful mission, process, or function of the school.

Neither shall he engage in such conduct for the purpose of causing the substantial and material disruption or obstruction of any lawful mission, process, or function of the school if such a disruption or obstruction is reasonably certain to result.

Neither shall he urge other students to engage in such conduct for the purpose of causing the substantial and material disruption or obstruction of any lawful mission, process, or function of the school if a substantial and material disruption or obstruction is reasonably certain to result from his urging.

While this list is not intended to be exclusive, the following acts—when done for the purpose of causing a substantial and material disruption or obstruction of any lawful mission, process, or function of the school—illustrate the kinds of offenses encompassed here: (1) occupying any school building, school grounds, or part thereof with intent to deprive others of its use; (2) blocking the entrance or exit of any school building or corridor or room therein with intent to deprive others of lawful access to or from, or use of, the building or corridor or room; (3) setting fire to or substantially damaging any school building or property; (4) firing, displaying, or threatening use of firearms, explosives, or other weapons on the school premises for any unlawful purpose; (5) prevention of or attempting to prevent by physical act the convening or continued functioning of any school, class, or activity or of any lawful meeting or assembly on the school campus; (6) preventing students from attending a class or school activity; (7) except under the direct instruction of the principal, blocking normal pedestrian or vehicular traffic on a school campus; and (8) continuously and intentionally making noise or acting in any manner so as to interfere seriously with the teacher's ability to conduct his class.

Comment: Much of the conduct prohibited by this rule is also in violation of other rules in this code. The purpose of this rule is to emphasize that any conduct that by intention substantially disrupts a school function or is likely to do so is forbidden.

The principal must exercise great care in determining what is a substantial disruption. When the conduct is nonviolent expression of opinion, it is often constitutionally protected. No conduct, however, is protected to the extent that it may substantially impair the functioning of the school.

[Several state statutes are available to deal with disruptive behavior in the school. G.S. 115-146 requires teachers and student teachers "to maintain good order and discipline" and authorizes them to use reasonable force "to restrain or correct pupils and maintain order." G.S. 115-147 authorizes the principal to suspend pupils who violate school rules, who may be guilty of immoral or disreputable conduct, or who may be a menace to the school. G.S. 115-150 grants the principal the authority to discipline school pupils.

Several criminal law statutes also apply. G.S. 14-288.4 prohibits disorderly conduct and unauthorized occupation of buildings. G.S. 14-132 prohibits disorderly conduct in and injuries to public buildings and facilities. G.S. 14-272 prohibits willfully disturbing school entertainment or any other lawful meeting. G.S. 14-273 prohibits willfully disturbing any public school. G.S. 14-132.1 prohibits sit-ins or other interference with the normal use of public buildings. G.S. 20-174.1 prohibits sit-ins or interference with traffic on streets and highways. G.S. 14-134 prohibits trespass after being forbidden. G.S. 14-288.6(a) creates the offense of trespass during emergency. G.S. 14-288.6(b) creates the offense of looting while trespassing during an emergency. G.S. 14-288.19 authorizes the Governor to order public buildings evacuated during public emergency or imminent threat thereof. G.S. 14-288.18 sets out a permissive injunction procedure for the superintendent to follow in event of school disorders.

Many other criminal statutes, too numerous to list, may be applicable in the event of a school disruption. For a fairly complete listing of applicable North Carolina criminal statutes pertaining to disruption on the college campus, most of which also apply to public school disruption, see **R. Phay, North Carolina Constitutional and Statutory Provisions with Respect to Higher Education** 72-99 (1970).]

RULE 2. DAMAGE OR DESTRUCTION OF SCHOOL PROPERTY

A student shall not intentionally cause or attempt to cause substantial damage to valuable school property or steal or attempt to steal school property of substantial value. Repeated

damage or theft involving school property of small value also shall be a basis for long-term suspension or expulsion from school.

Comment: This rule is phrased in terms of "property of substantial value" because the aim of all these rules is to define only the most **serious** student misconduct—conduct that can be punished by the most serious penalties of long-term suspension or expulsion. Of course, intentional destruction or theft of school property of **any** value is prohibited by state law (see statutes cited below) and by this code. In Section 3(b) the principal may exercise his independent authority to punish, which includes suspensions up to five days, in dealing with misconduct of the kind described in these rules but not serious enough to be deemed in violation of the rules.

Attempt to differentiate two categories of violations was made because we feel that the serious sanctions of long-term suspension and expulsion should not and need not be available in dealing with minor violations such as carving on desk tops, marking walls, or writing in books. Serious violations or repeated minor violations, however, may be punished by the severe sanctions.

The principal makes the initial determination as to what is "substantial damage" or "substantial value." He should consider with great care the degree of actual detriment to the school and the necessity of replacement or repair, as well as the value of the property involved. Examples of actions that do "substantial damage" might include attempted or actual burning of a school building, deliberate destruction of laboratory apparatus, or wrecking of school files.

[Several North Carolina statutes deal with property damage. G.S. 1-538.1 allows the school to recover damages of up to $500 from the parents of a minor under the age of eighteen who maliciously or willfully destroys school property. G.S. 14-132 makes it a misdemeanor for any person to "unlawfully write or scribble on, mark, deface, besmear, or injure the walls of any public building or facility" and authorizes the person in charge of the public building or facility to arrest summarily and without warrant for any such violation.

G.S. 14-60 makes it a felony for any person to "willfully set fire or attempt to set fire to any schoolhouse or building owned, leased or used by any public or private school . . . or procure the same to be done." G.S. 14-273 provides that it shall be a misdemeanor for any person to "injure any school building, or deface any school furniture, apparatus or other school property." G.S. 115-149 makes it the duty of every teacher and principal to in-

struct students in the proper care of school property, to protect school property from damage, and to report damage to the parents of the student involved. G.S. 115-133 makes principals, teachers, and janitors responsible for damage to school buildings resulting from lack of proper discipline of pupils. G.S. 115-133.2 authorizes school boards to offer rewards for information leading to the arrest and conviction of persons who vandalize, steal, or damage school property. See also G.S. 14-398.]

RULE 3. DAMAGE OR DESTRUCTION OF PRIVATE PROPERTY

A student shall not intentionally cause or attempt to cause substantial damage to valuable private property or steal or attempt to steal valuable private property either on the school grounds or during a school activity, function, or event off school grounds. Repeated damage or theft involving private property of small value also shall be a basis for long-term suspension or expulsion from school.

Comment: The first and second paragraphs of the comment accompanying Rule 2 contain remarks that are applicable here.

Though the interest of the school in protecting private property is not so clear as its interest in protecting public property, any theft in a school raises legitimate school concerns. The purpose of this provision, like all others, is to allow the school to deal with serious misconduct by its own internal controls, without calling in the police when it thinks this course unnecessary. It should be noted, however, that as the **in loco parentis** concept (the school acting in the place of the parent during school hours) has decreased, particularly for high school age students, school administrators increasingly have been willing to swear out warrants and involve the police when violations of the criminal statute have taken place.

[G.S. 14-160 provides that willful injury of the personal property of another is a misdemeanor. Other criminal statutes prohibit larceny, receiving stolen goods, robbery, etc.]

RULE 4. ASSAULT ON A SCHOOL EMPLOYEE

A student shall not intentionally cause or attempt to cause physical injury or intentionally behave in such a way as could reasonably cause physical injury to a school employee

(1) on the school grounds during and immediately before or immediately after school hours,

(2) on the school grounds at any other time when the school is being used by a school group, or
(3) off the school grounds at a school activity, function, or event.

Neither self-defense nor action undertaken on the reasonable belief that it was necessary to protect some other person is to be considered an intentional act under this rule.

Comment: In an earlier draft we provided that "a student shall not intentionally cause physical injury **without adequate excuse or justification.**" The emphasized provision was to cover those unusual but conceivable situations in which a student is not blameworthy for an intentional physical attack or attempt. These situations include self-defense or action undertaken on the reasonable belief that it was necessary to protect some other person. Several school administrators thought this exception would be misunderstood by students and would offer an out to one who "thinks" he has adequate reason to intentionally cause physical injury. We have, therefore, deleted the original "justification" phrase and specifically added these two exceptions to the rule.

[Numerous criminal statutes prohibit assaults. See, e.g., G.S. 14-33 (misdemeanor assaults, batteries, and affrays), G.S. 14-34 (assaulting by pointing a gun), and G.S. 14-32 (assault with deadly weapon with intent to kill). Article 8 of Chapter 14 of the General Statutes, which was extensively revised by the 1969 General Assembly, contains eleven different assault statutes.]

RULE 5. PHYSICAL ABUSE OF A STUDENT OR OTHER PERSON NOT EMPLOYED BY THE SCHOOL

A student shall not intentionally do serious bodily injury to any person

(1) on the school grounds during and immediately before or immediately after school hours,
(2) on the school grounds at any other time when the school is being used by a school group, or
(3) off the school grounds at a school activity, function, or event.

Neither self-defense nor action undertaken on the reasonable belief that it was unnecessary to protect some other person is to be considered an intentional act under this rule.

Comment: This provision covers physical attacks on persons other than school personnel and requires serious bodily injury

before the major penalties of long-term suspension or expulsion are warranted.

[See references to assault statutes in the comment to Rule 4.]

RULE 6. WEAPONS AND DANGEROUS INSTRUMENTS

- Option One

A student shall not knowingly possess, handle, or transmit any object that can reasonably be considered a weapon

(1) on the school grounds during and immediately before or immediately after school hours,
(2) on the school grounds at any other time when the school is being used by a school group, or
(3) off the school grounds at any school activity, function, or event.

This rule does not apply to normal school supplies like pencils or compasses but does apply to any firearm, any explosive including firecrackers, any knife other than a small penknife, and other dangerous objects of no reasonable use to the pupil at school.

- Option Two

A student shall not knowingly possess, handle, or transmit a knife, razor, ice pick, explosive, loaded cane, sword cane, machete, pistol, rifle, shotgun, pellet gun, or other object that reasonably can be considered a weapon

(1) on the school grounds during and immediately before or immediately after school hours,
(2) on the school grounds at any other time when the school is being used by a school group, or
(3) off the school grounds at a school activity, function, or event.

This rule does not apply to normal school supplies like pencils or compasses.

Comment: [The Winston-Salem/Forsyth school unit obtained a local weapons-control bill (1969 SL, Ch. 1187), which makes it a misdemeanor to possess specified weapons on school property. G.S. 14-269 makes it a misdemeanor to possess concealed weapons off one's own premises. Concealed weapons are defined to include "bowie knife; dirk; dagger; slingshot; loaded cane;

brass, iron, or metallic knuckles; razor; pistol; gun, or other deadly weapon of like kind."]

RULE 7. NARCOTICS, ALCOHOLIC BEVERAGES, AND STIMULANT DRUGS

A student shall not knowingly possess, use, transmit, or be under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind

(1) on the school grounds during and immediately before or immediately after school hours,
(2) on the school grounds at any other time when the school is being used by any school group, or
(3) off the school grounds at a school activity, function, or event.

Use of a drug authorized by a medical prescription from a registered physician shall not be considered a violation of this rule.

Comment: [The Narcotic Drug Act and other statutes on barbiturates and stimulant drugs are in Article 5 and 5A of Chapter 90 of the General Statutes.]

RULE 8. REPEATED SCHOOL VIOLATIONS

A student shall not repeatedly fail to comply with directions of teachers, student teachers, substitute teachers, teacher aides, principals or other authorized school personnel during any period of time when he is properly under the authority of school personnel.

Comment: This rule is a "catch-all" and should be applied with circumspection. Basically, it is aimed at those students whose conduct is consistently at odds with normal school discipline and who do not respond to guidance or minor discipline. It also may apply to the student who stubbornly refuses to carry out some legitimate direction of his teacher or of other authorized school personnel. Consideration should be given to whether a student should receive severe, lenient, or perhaps no punishment for failure to comply with directions based on reasonable opinions held in good faith that the directions were unauthorized or detrimental to some proper interest.

[G.S. 115-147 authorizes the principal to suspend any pupil who willfully and persistently violates the rules of the school.]

PART II

Procedural Code for Dealing with Alleged Violations

Until recently few procedural requirements were placed upon the school when it decided to suspend or expel a student. Education was considered a privilege, not a right, and school expulsions were generally not reviewed by a court. Today education is considered a right that cannot be denied without proper reason and unless proper procedures are followed. Courts now require that students be accorded minimum standards of fairness and due process of law in a disciplinary procedure that may terminate in expulsion.

The requirements of due process are not fixed. What is required depends largely on the severity of the school's action, and no particular procedural model is imposed. If the only penalty that may be given is a spanking or detention after class, no formal procedure is required. In cases of severe discipline, such as long-term suspension or expulsion, minimum standards are generally thought to include (1) adequate notice to the student of the charges against him and the nature of the evidence to support those charges, (2) a hearing, and (3) a disciplinary decision that is supported by the evidence.

The following procedural code provides for these constitutional requirements. It attempts to create a procedure that will produce a reliable determination of the issues while minimizing the adversary nature of the proceeding.

Bracketed material in a rule is an option or alternative to that recommended in the section.

North Carolina statutes that relate to the subject matter dealt with by each section appear in brackets at the end of the comments.

A. General Provisions

SECTION 1. COVERAGE

Alleged misconduct shall be dealt with by the principal* or his designee:

(a) whenever a teacher considers a problem of classroom discipline to be so serious as to warrant the principal's attention; or,
(b) whenever the alleged misconduct constitutes a violation of the rules that govern serious misconduct; or,
(c) whenever the principal deems it advisable that he deal personally with the misconduct.

Comment: This code of procedure does not deal with ordinary classroom discipline; it covers only those disciplinary matters serious enough to be dealt with by the principal or his designee. The teacher should make every effort to handle personally the usual problems of maintaining classroom discipline before involving the principal. Teachers should know that state law, G.S. 115-146, places upon them the responsibility and gives them the authority to maintain good order and discipline in their schools. That statute provides:

> It shall be the duty of all teachers, including student teachers when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools. . . .
>
> Principals, teachers, and student teachers in the public schools in this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order.

However, when the teacher becomes aware of conduct that appears to violate a rule governing serious misconduct, the penalty for which may be a long-term suspension or expulsion, he is required to refer the student involved to the principal. Thus, the handling of serious misconduct becomes the responsibility of the principal, who should investigate and act on the alleged rule violation.

The principal's disciplinary authority is not limited to these situations; indeed, he personally may handle any misconduct, as provided in subsection c above. Rather, these provisions are intended to insure that the principal will manage matters of serious

* Future references to the principal refer also to any other school administrator to whom he may delegate his authority.

misconduct while matters of minor misconduct are channeled through other persons.

We also suggest that each school adopt written procedures for handling teacher referrals of misbehaving students. Such procedures should require that the teacher making the referral fill out a form stating the facts of the misconduct as he knows them. The procedure also should provide for prompt notification to the teacher of the principal's action on the misconduct.

SECTION 2. PRINCIPAL'S INVESTIGATION

In dealing with alleged misconduct, the principal shall investigate the incident and hear all available accounts of it. The student shall be encouraged to raise any defense he thinks relevant. If the student requests that other witnesses be questioned, the principal should talk to them if possible. If the student makes a reasonable claim of other defensive matter that, if true, would free him from blame but is not immediately available, the principal should postpone disciplinary action for a reasonable time until such evidence may be presented to him.

Comment: In most cases, all relevant evidence will be brought out by the principal's investigation so that he can make an informed decision soon after the discovery of the misconduct. Only rarely will some necessary information be unavailable at the school. If the student makes a reasonable request to present evidence not immediately available, fairness requires a short delay in the principal's action. An example of such an instance would be when a student possesses an interdicted drug but claims to have a prescription at home.

In cases of serious misconduct, parents should be contacted and encouraged to come to the school at the time when the principal begins his investigation.

SECTION 3. LIMITATION ON PRINCIPAL'S POWER TO SUSPEND OR TO REQUEST A HEARING

If the principal investigates a student's alleged misconduct and decides to take disciplinary action, he must investigate and take action on all alleged misconduct known to him at that time. Consequently, the most serious action he can take on his own authority for any and all misconduct by a particular student, known to him at any one time, is to give a five-day suspension.

(See Section 5.) If he thinks additional penalties appropriate, he may seek the superintendent's approval to initiate the procedure for obtaining a long-term suspension or expulsion. (See Section 8.)

Comment: This provision is designed to insure that once a student is suspended by the principal for five days, the principal may not suspend him further except for misconduct not known to the principal or not alleged to him at the time of the original investigation.

B. Sections Applicable to Summary and Short-Term Suspensions

SECTION 4. SUMMARY SUSPENSION

If the principal witnesses any serious student misconduct **and** he thinks that immediate removal of the student(s) is necessary to restore order or to protect persons on the school grounds, he may suspend the student immediately for not more than two school days.

In such cases the principal is not required to conduct the investigation described in Section 2 before he suspends, but he shall carry out such an investigation and decide on further disciplinary action, if any, at least by the end of the school day following the summary suspension. If he thinks an additional suspension is necessary, the total suspended time shall not exceed five school days.

Once a principal has decided to suspend a student summarily, he shall follow the procedures described in Section 6 for sending a student home during the school day.

Comment: This section is intended to cover those rare situations in which conduct is so disruptive that the principal believes he must remove the student from the school immediately. Suspension under this section differs from the short-term suspension described in Section 5 in that the principal need not carry out the investigation required by Section 2 before deciding to act. Rather, his viewing of the misconduct plus a need for some immediate action to restore order or protect persons on school

grounds combine to provide him a reasonable basis for immediately suspending the student.

It should be noted that the principal is permitted to suspend summarily only when he personally views serious misconduct. He need not view all of a student's misconduct, but some serious misconduct by the student must take place in the principal's presence before he may forego the Section 2 investigation. This minimum requirement seems reasonable because if the misconduct has stopped, the situation is not likely to be so threatening that he cannot carry out his investigation before invoking discipline.

SECTION 5. SHORT-TERM SUSPENSION

A short-term suspension is a denial to a student of the right to attend school and to take part in any school function for any period of time up to five school days. The principal may invoke a short-term suspension only after investigating the misconduct and only for the following reasons:

(a) a violation of the school board rules prohibiting serious student misconduct listed in Part I of this document; or
(b) misconduct of the same type as that prohibited by the rules governing serious student misconduct but which does not rise to the gravity of the misconduct stated by these rules; or,
(c) misconduct that is proscribed by rules adopted by the school board covering minor misconduct.

Any suspension denying a student the right to attend school during the last ten days of the school year must be approved by the superintendent in accordance with G.S. 115-147.

Once a principal has decided to invoke a short-term suspension, he shall follow the procedures of Section 6 for sending a student home during the school day.

The removal of a student from his class by the classroom teacher, principal, or other authorized school personnel for the remainder of the subject period or school day and his location in another room on the school premises shall not be considered a short-term suspension and shall not come under the rules and procedures set forth above.

Comment: The rules proscribing serious misconduct state that such misconduct may be grounds for long-term suspension or expulsion. Since the rules cover a wide range of misconduct, the

school should have wide flexibility in matching a penalty to the violation. But the extreme penalties authorized are by no means intended to be automatically applied to all misconduct covered by the rules. Rather, the principal should make every effort to deal with all misconduct, serious and minor, within the area of his independent authority—which includes everything from no action, to guidance conferences, to lesser penalties like detention, to probation, to suspension from school for from one to five school days. In other words, extreme violations may be grounds for extreme sanctions, but the principal should seek such sanctions only when he thinks he cannot deal adequately with the problem by action within his authority.

The principal also may employ his independent disciplinary authority to deal with misconduct similar to, but not as serious as, that described in Rules 1-8. For example, marking on a desk top is not "defacing of school property causing substantial damage," but it is misconduct of the same type (that is, causing damage to school property) and could lead to some action by the principal. This does not mean that the principal must suspend for minor misconduct or, if he does suspend, that he must do so for the maximum of five days. Indeed, suspension for any length of time is to be employed only when guidance efforts or lesser penalties appear ineffective.

This code does not attempt to define more specifically than in subsection 5(b) another level of misconduct that may be punished by no more than the principal's five-day suspension, but it emphasizes that no penalty should be given except for violations of some legitimate school rule. Therefore, subsection 5(b) provides that the principal may employ his disciplinary powers to punish "minor" misconduct that is similar to the conduct proscribed by the rules governing serious misconduct because we feel that these accompanying rules generally cover the areas of the school's legitimate interests. However, if the school finds it necessary to specify other misconduct that may be met with discipline no more severe than a principal's suspension, it should do so with particularity, and only within an area of legitimate concern to the school.

SECTION 6. SENDING A SUSPENDED STUDENT HOME DURING THE SCHOOL DAY

When a student is suspended, the principal shall attempt to reach the student's parents or legal guardian (hereinafter the term parent(s) includes legal guardian) to inform them of the

school's action and to request that they come to the school for their child. If the parents are unable to come for their child, the school shall provide transportation to his home, assuming that a parent is there to receive him. If the principal cannot reach the parents, the student must remain on school property until the close of the school day.

Notwithstanding the above requirement that a suspended student be released only to a parent, the principal may order students to leave the school premises immediately when he is faced with mass violations to school rules and it is not possible to keep the students on school grounds and restore order or protect people on the school grounds. Even in this case, distance to home and the age and sex of the individual child may require keeping him until his parents can be contacted.

Comment: The parents are immediately notified of the suspension in order to involve them at the earliest moment in the discipline of their child. To eliminate any liability for injuries sustained by an unescorted or unsupervised student who was ordered to leave the school premises during the school hours and to avoid school responsibility for any further acts of the student after being suspended, this section requires either that the parents come to the school for the student or that he be delivered to a parent by a school employee. If a parent cannot be notified of the suspension, the pupil can be placed in a status of "in-school" suspension and required to remain in school for the remainder of the school day. The principal can segregate him from other students, but he should place him under the supervision of a counselor, teacher, or other authorized school person. It may be preferable, however, to permit him to attend classes but require him to report back to the principal's office as soon as class or classes are completed.

SECTION 7. INFORMING THE PARENTS IN CASES OF SUMMARY AND SHORT-TERM SUSPENSION

When a student is suspended, the principal shall:

(a) send a statement to his parents and to the superintendent fully describing his misconduct, stating the rule violated, and stating the principal's reasons for action;

(b) make every effort to hold a conference with the parents before or at the time the student returns to school;

(c) secure written statements and keep on file all documents and relevant information received about the misconduct.

Comment: Establishing contact with the parents at the earliest possible moment is very important when disciplinary problems arise, especially when the discipline involves suspension. Recognizing that some parents cannot attend a day-time conference, principals should try to meet with them in the evening or on weekends.

The principal may not want to readmit a student until he has conferred with the parents. This technique often may be useful, but it may not be applied if the student must thereby stay out of school for longer than five school days.

C. Sections Applicable to Long-Term Suspension and Expulsion

SECTION 8. INITIATING LONG-TERM SUSPENSION OR EXPULSION

(a) Decision to Seek Suspension Over Five Days or Expulsion

If, after his investigation, the principal decides that a penalty more severe than any within his own authority is warranted, he may, with the approval of the superintendent, notify the Convener of the hearing board of their decision and ask that a hearing date be set. (See Section 10.) The principal must decide to do this and ask for a long-term suspension within five days after he learns of the misconduct.

Comment: Since G.S. 115-147 requires the superintendent's approval of any suspension over ten days, and because even a suspension between five and ten days is serious, it seems appropriate that the superintendent be brought into the process early and his approval required before the principal seeks authorization for a greater penalty than he alone can impose.

The scheduling of a tentative hearing date has been made the principal's first duty after he secures the superintendent's approval so that the student and his parents may know as soon as possible how much time they have before the hearing and so that the practical problems of scheduling and assuring the at-

tendance of witnesses and board members can be worked out as early as possible. This tentative date may be changed but should not be moved up unless agreed to by all parties.

(b) Sanction Before Hearing

The procedure described in subsection (a) above does not affect the principal's authority to invoke a short-term suspension or other sanction after his investigation. He may choose, however, to take no action other than to turn the entire matter over to the hearing board.

Comment: This provision makes clear that the principal need not suspend the student or penalize him before the charges against him are considered by the hearing board. When accounts of the alleged misconduct conflict sharply, the principal may wish to defer any decision until the hearing board has decided the question of guilt. In this situation he may want to proceed with a hearing even though the penalty he contemplates for a violation of the rule is not an expulsion or long-term suspension.

SECTION 9. NOTICE

Whenever the principal seeks a long-term suspension or expulsion, he must give written notice to the student and his parents as soon as possible. Notice should be given no later than the end of the school day following the day of alleged misconduct. The notice shall include:

(a) The rule allegedly violated and the acts of the student thought to have violated the rule, including a summary of the evidence against him.
(b) The penalty that the principal plans to recommend to the hearing board and plans to apply (or request the superintendent to apply) if the hearing is waived.
(c) A tentative time and place for the hearing.
(d) A description of the hearing procedures (discussed on pages 38-43 in this code) adopted by the school board.
(e) Notification that written statements about the misconduct and some of the student's records (see Sections 12 and 13) are available at the school for examination by the student, his parents, and his representative.
(f) A statement that before long-term suspension or expulsion can be invoked the student has a right to a hearing which may be waived if he **and** his parents agree to forego it by furnish-

ing the principal a signed statement to that effect. The student and his parents shall notify the school within twenty-four hours after receipt of notice as to whether they will waive the hearing. If no notification is received, the hearing schedule will be observed.

A copy of parts (a), (b), and (c) of the notice shall be sent to the Convener of the hearing board.

Comment: For the student and parents to make an informed decision to request or forego the hearing, they need to have full knowledge of the offense charged, the basis of the charge, the nature of the hearing, the opportunities that they will have to make a defense, and the possible penalty.

Giving written notice to the parents may sometimes be difficult. Under ideal circumstances the notice could be delivered to the parents at the school if they come to the school for a conference shortly after the investigation begins. Otherwise the notice might be hand-delivered to the parents at their home or place of work or sent by registered mail. The school must know that the parents have received the notice and know this as soon as possible so that a definite hearing date can be set pursuant to Section 10.

SECTION 10. SCHEDULING THE HEARING

If the hearing is not waived, it should be scheduled after school hours on the second, third, or fourth school day after the notification required by Section 9 has been received. The Convener may schedule a different date for the hearing if good and sufficient cause is shown by either the student or by the principal. In so far as is feasible, however, the hearing should not be held later than the fourth school day after the day that both parents and student receive the notification.

Comment: This time schedule should not burden the school or the student. An example of how it might be expected to work follows: First, the student is brought before the principal on Monday, the day of the misconduct. Second, the principal conducts his investigation at that time and decides to suspend the student for five days and, after consulting with the superintendent, to seek an expulsion. Third, the parents and the student are notified of the pending disciplinary action on Monday (notice should be given not later than the end of the next day, Tuesday). Fourth, if the parents and student do not waive the hearing by notifying the principal not later than Tuesday (assuming that they received

notice on Monday), they should be informed by the principal on Tuesday or Wednesday of the definite time for the hearing, which may be held no sooner than Wednesday afternoon (the second day after notification on Monday) or later than Friday night (the fourth day after notification on Monday).

This procedure is arranged so that in the extreme case of a student who has been suspended for five days by the principal, the student may go before the hearing board and have his case finally decided by the end of the five-day suspension. The Convener should not hesitate, however, to postpone the hearing beyond the set date if it seems necessary in order to secure the presence of a certain witness or to give the student adequate time to prepare or for any other legitimate reason. In most cases, however, the two or three days normally allowed for preparation should be sufficient.

SECTION 11. GROUP HEARINGS

When students are charged with violating the same rule, and have acted in concert, and the facts are basically the same for all students, a single hearing may be conducted for them if the Convener of the hearing board believes that the following conditions exist:

(a) A single hearing will not likely result in confusion, and
(b) No student will have his interests substantially prejudiced by a group hearing.

If, during the hearing, the Convener finds that a student's interests will be substantially prejudiced by the group hearing, he may order a separate hearing for that student.

Comment: Mass violations of school rules are a growing phenomenon in schools today. Groups of students may be involved in property destruction, assault, or disruption of school operations. When the school has encountered group violations, it usually will not have the facilities, time, or energy to hear each alleged violation separately. This section permits the school to conduct one hearing for a large number of students. This procedure has been used and upheld as legally proper.

SECTION 12. WITNESS STATEMENTS

The principal shall make available in his office at least two days before the hearing the signed statements of all persons on

whose information are based the charge against the student and the penalty suggested by the principal. These statements may be examined and copied by the student, parents, and representative. If the principal later receives any further information that will be employed at the hearing, he must notify the student of it and make copies available before the hearing.

Likewise, the student shall file with the principal before the hearing signed statements of any witnesses who have defensive information he wishes considered at the hearing, including his own statement of defense if he chooses to make one.

These statements shall set out with some particularity the information known to the persons making them. For example, if the student is charged with consistently failing to follow a teacher's directions, the consistent nature of the failures must be specifically described.

> **Comment:** It is important for all parties to know the nature of the information that will be presented at the hearing so that all may prepare for the hearing and make it a useful and productive study of the problems. The statements should be available to the Convener and other board members before the hearing.

SECTION 13. AVAILABILITY OF THE STUDENT'S PREVIOUS RECORDS

Besides having access to the written statements that form the basis of evidence against the student, his parents or his representative shall have access to his previous behavior record and his academic record. If the school deems it necessary, the information contained in such records may be furnished to the parents or representative only on condition that they be explained and interpreted to the parents or representative by a person trained in their use and interpretation.

> **Comment:** These records will be at the disposal of the hearing board, but the student, his parents, and his representative also should have access to them so that they will have the opportunity to point out and emphasize relevant information contained therein. The utmost circumspection is required in their use. Their confidential nature should be stressed to all parties including the members of the hearing board.

SECTION 14. COMPOSITION OF THE HEARING BOARD

(a) Convener

The principal [superintendent] shall appoint a Convener [or the Convener could be elected by the faculty] who will be the presiding officer of the hearing board. The Convener has no vote and should not need to vote even to break a tie because the board should always be composed of an odd number. But if a board member disqualifies himself during a hearing or other unusual circumstances arise requiring a tie-breaking vote, the Convener may vote to break the tie. If the Convener chooses not to break the tie, the principal may ask the Convener to hold anotner hearing with a different board.

The Convener has all other rights and duties of a hearing board member as well as the following specific duties and powers:

(1) He schedules the hearing at a specified date, time, and place. He has authority to postpone the date and time or change the place for good cause.
(2) He assures the presence of a full board at the hearing, however selected.
(3) He is available before the hearing to answer any questions that the student (or his parents or representative) may have about the nature and conduct of the hearing.
(4) He has full charge of the hearing and has authority to direct its proceedings and to control the conduct of all persons present, subject to the general directions of this procedural code. He may limit questioning by non-board members that is unproductively lengthy or irrelevant.
(5) He writes the hearing board's findings of facts and recommendations for action. He may delegate this responsibility to another member of the board.
(6) He transmits the board's written findings and recommendations to the superintendent as soon as possible after the hearing.

If the Convener cannot or chooses not to perform the duties of the Convener, the principal [superintendent] shall appoint a new Convener for the hearing board.

Comment: Someone must be in charge of the hearing. Someone must act for the board in making the arrangements of time and place and assuring the presence of the required number of

board members. Some one person must have authority to say "who can do what" at the hearing. Finally, this same person seems best suited to explain the hearing process to the student if he has questions. We call this person the Convener.

Primarily because of this last function, we think that the Convener should not have a vote in the final decision unless a tie must be broken. His authority as a chairman is complete, however. Within the confines of the rules governing the conduct of the hearing, he may direct the order and manner in which information is presented and considered.

Because most of his specific duties involve contacting or conferring with persons at the school, we feel that the Convener should be someone employed at the school—either a guidance counselor, an attendance counselor, a social worker, or a teacher. Though in many cases the principal or one of his administrative assistants might serve well as Convener, we discourage such an arrangement. Our primary reason is that the principal already has judged the case by the time it reaches the hearing board. In fact, he may already have taken disciplinary action of his own. He cannot be expected to reapproach the situation with a completely open mind. Furthermore, the principal, because of his familiarity with the case and his own position of authority, might have an unduly strong influence on the rest of the hearing board even though he does not vote.

If there are more than a few hearings in a school year, the Convener's job may be a big one. This should be recognized when the Convener is being appointed and perhaps his other duties adjusted accordingly.

The Convener may be appointed by the principal, or by the principal with the approval of the superintendent, or by the superintendent, or in any other way that seems appropriate to the school board. It is important, however, that the Convener be not an administrative assistant to the principal, but someone who can fulfill his duties as Convener independently of the principal.

(b) Regular Hearing Board Members

- Option One

The rest of the board shall consist of two [or three] students, two [or three] teachers, and one parent. They shall serve throughout the school year. The student members shall be elected by the students. The teacher members shall be elected by the teachers. The parent shall be elected by the school's PTA. A sufficient number of alternates from each group shall be elected

to insure that the Convener will be able to bring together on short notice a full panel of five [or seven] with the proper ratio among the groups.

If a regular member is not available for the scheduled hearing date, the Convener shall replace him by selecting an alternate from the appropriate list of alternates. The selection shall be based upon some method of regular rotation.

- Option Two

The rest of the board shall consist of two [or three] teachers and one [or two] parent[s] appointed by the principal [or superintendent or school board]. They shall serve throughout the school year. A sufficient number of alternates from each group shall be appointed to insure that the Convener will be able to bring together on short notice a full panel of three [or five] with the proper ratio of teachers to parents.

If a regular member is not available for the scheduled hearing date, the Convener shall replace him by selecting an alternate from the appropriate list of alternates. The selection shall be based upon some method of regular rotation.

- Option Three

The rest of the board shall consist of three [or five] teachers. They shall be elected by the teachers as a group and shall serve throughout the school year. A sufficient number of alternates shall be selected to insure that the Convener will be able to bring together on short notice a full panel of three [or five].

If a regular member is not available for the scheduled hearing date, the Convener shall replace him by selecting an alternate from the appropriate list of alternates. The selection shall be based upon some method of regular rotation.

> **Comment:** The "board" could be a single person, but there would be a great tendency to make that person a school administrator; the inadvisability of the presence of the principal or his assistants on the hearing board already has been pointed out. A multi-member board will allow both schoolmen and non-schoolmen to be involved without having the decision rest on any one. The multi-member board also will bring a variety of backgrounds, perspectives, and ideas to the board that is not possible with a single-member board. Thus the hearing procedure should be broader in its approach and the board's decision better accepted in the school community.

The use of students on the hearing board merits special comment since students have never served until recently in such capacities. We point out that students are the group most directly affected by board actions. Thus they have a direct interest that is different from that of any other school constituent. Furthermore, high school students today view themselves as deserving and as capable of participating in processes that directly affect them. They often feel that their participation is important to legitimate the process. Indeed, we must recognize that many high school students are mature enough to participate effectively on the hearing board. Experience in one North Carolina high school in which students have been members of the board has shown that their presence can result in increased student respect and acceptance for the board. For these reasons, Option One providing for a minority of student members on the board should be considered carefully by school boards in making a choice on board composition.

(c) Conflict of Roles

Anyone who has had direct contact with the student's alleged misconduct or who will probably give testimony to the hearing board should not serve as a member of the hearing board.

Comment: A fair hearing is a legal requirement. Thus the hearing officers must be impartial and free of bias. One court has gone so far as to hold that a person's prior official involvement with a particular school disciplinary problem will render him presumptively biased in further proceedings on that case. For these reasons, we recommend that anyone with direct involvement or who will likely testify to the board not serve as a member of the hearing board.

SECTION 15. CONDUCT OF THE HEARING

(a) Closed Hearing

The hearing may be attended only by the hearing board members, the superintendent of schools, the principal, the student, the parents, and the student's representative. Witnesses should be present only when they are giving information to the board. The student may be excluded in the discretion of the board with the concurrence of the student's parents (or the representative when he acts in the place of the parents) at times when his psychological or emotional problems are being discussed. No one may be present with the board during its deliberations.

Comment: The presence of the parents and the representative will protect the student against the possibility of unfair hidden practices. Therefore, the use of an open hearing, with its attendant possible commotion and prejudice to the student or others, is unnecessary.

(b) Student May Remain Silent

The student may speak in his own defense and may be questioned on his testimony, but he may choose not to testify and in such cases he shall not be threatened with punishment or later punished for refusal to testify.

Comment: The Fifth Amendment is not applicable to school discipline cases but it seems unrealistic to try to force a student against his will to testify at the hearing. The school should be required to have sufficient independent evidence against the student to prove its contentions; it should not hope to prove them out of the student's mouth.

(c) Record of the Hearing

The hearing board shall provide for making a record of any information orally presented to it at the hearing. Statements and other written matter presented to the board should be kept on file by the principal.

Comment: If the decision of the hearing board is appealed to the school board, a record of the original hearing (not the board's deliberations) is necessary to avoid a complete new hearing. This record can be made from either notes taken by a secretary, with the approval of all sides, or a tape recording of the hearing. The use of a tape recording would seem most convenient and least expensive. The recording need not be transcribed unless an appeal is taken.

(d) Principal's Presentation of Statements and Records

It shall be the principal's duty to present to the hearing board at the hearing the signed statements of all persons having information about the student's misconduct. These shall be the same statements that previously have been available to the student in the school office and those statements that the student has submitted to that office. He also shall submit a copy of subsections (a) and (b) of the notice given to the students and parents under Section 9. (These sections explain the charge and the suggested punishment.)

Further, upon the request of the board, the student, the parents, or the student's representative, the principal shall submit to the hearing board the student's record of previous behavior and his academic record. If the principal or the hearing board deems it necessary, the information contained in such records shall be explained and interpreted to the board by a person trained in their use and interpretation.

The principal shall caution the hearing board about the confidentiality of all records and statements submitted to it.

> **Comment:** The statements of all witnesses should be available at the hearing to settle disputes that might arise about previously given accounts as well as to provide all the basic information.
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> Student records may or may not be used by the board, but should be available upon request of the board, the student, his parents, or his representative.

(e) Use of Witnesses

- Option One

The hearing shall consist of a review of the statements and records presented by the principal under subsection (d) above. But if the principal, the student, or the Convener requests that any witness appear in person and answer questions, that witness must do so or his statement may not be considered or relied on by the board.

- Option Two

The hearing shall consist of the oral examination of witnesses whose signed statements have been presented to the board by the principal under subsection (d) above, as well as a review of school records when requested by either party. But if the principal, the student, and the Convener agree that the presence of a witness is unnecessary and that his written statement is adequate to convey his information to the board, he may be excused. If an unexcused witness does not appear, his signed statement may not be considered or relied on by the board.

> **Comment:** These options differ only in emphasis. The first attempts to simplify the hearing by not requiring witnesses to appear. It assumes that the facts of the misconduct often will be admitted and only the principal's recommendation for punishment will be contested. It enforces any party's request for a witness'

presence, however, by denying the use of that person's statement if he does not appear when requested.

The second option rests on the assumption that often the principal will want the school witnesses to appear even if the student does not. Likewise, the student may want to bring his own witness, if he has any, to testify in person. Thus, to avoid the confusion that might result from the requirement of requests that certain witnesses be present, Option Two provides that witnesses shall always be present except when all agree that this is unnecessary. The likelihood of this agreement, of course, forms the basis of the first option.

(f) Examination of Witnesses

Members of the hearing board [and the principal, the student, his parents, and his representative] may question witnesses, (witnesses include the principal and the student) about any matters logically relevant to the charge against the student and the proper disposition of the matter. The Convener has authority to limit unproductively long or irrelevant questioning by non-board members.

Comment: It is the primary responsibility of the hearing board members, under the supervision of the Convener, to question any witnesses who appear personally and to draw out their information. Their questioning should be as extensive as they think necessary to gauge the accuracy and weight of the person's statements. It should be both a direct examination and a cross-examination. This is possible because the board does not represent any viewpoint but is seeking to discover the truth as the ultimate "judge" in the hearing.

Other parties at the hearing probably also will have questions to ask of the witnesses. The principal, the student, and his parents and representative all approach the hearing with different viewpoints and different backgrounds and may have helpful questions to ask. They, as well as the board members, can help bring out forgotten information, careless errors in memory or perception or expression, bias, or untruthfulness. All persons involved should be glad to have the careless errors corrected. On the other hand, the uncovering of bias or untruthfulness may be embarrassing to the witness. But embarrassment cannot outweigh the need for such questioning.

(g) Role of the Parents

The parents or legal guardian should be present at the hearing and should have an opportunity to make a statement to the board

on their feelings about the proper disposition of the case and to answer questions. Any statements they make need not be filed with the principal before the hearing. They should be able to advise the student during the hearing. If allowed by subsection (f), they may also question any witness.

If the parents are out of town or for any other substantial reason are unable to attend, the adult representative described in subsection (h) may act in the place of the parents as their role is set out above.

(h) Adult Representation in Addition to Parents

- Option One

If the parents cannot be present **or** if the student or his parents think his interests can be protected better by the presence at the hearing of another adult in addition to his parents or guardian, the student may bring another adult to the hearing. The non-parent adult may act as a representative in the defense of the student, with the right to present witnesses, question any and all witnesses if allowed under subsection (f), make a statement on the nature of the evidence and the proper disposition of the case, and otherwise assist the student.

The non-parent adult may not [or may] be an attorney. [The non-parent adult may be an attorney when he is taking the place of absent parents.]

[If the Convener thinks the presence of the school board attorney will be helpful at the hearing, he may request his presence. (This provision is to be added **only** if the school board permits the student to be represented by an attorney.)]

- Option Two

If the parents cannot be present **or** if the student or his parents think his interests can be protected better by the presence of another adult in addition to the parents, the student may bring another adult to the hearing. If the parents are present, the non-parent adult may advise the student but he may not examine witnesses, make any statement, or in any way actively represent the student before the board. If the parents cannot be present the non-parent adult has all the rights of a parent before the hearing board as provided in subsection (g).

The non-parent adult may not [or may] be an attorney. [The

non-parent adult may be an attorney except when he is taking the place of absent parents.]

Comment: This rule, permitting an adult representative in addition to the parents, recognizes that there will be times when parents are unavailable or are incapable of adequately representing the student at the hearings. This rule will permit the student or his parents to bring a non-parent adult to the hearing when either thinks the student's interest can be better protected by his presence. The representative may be a minister, a social worker, or teacher, or an attorney if the school board specifically allows that he may be an attorney.

There is one basic difference between the options. Option Two limits the non-parent adult to an advisory role except when the parents cannot attend the hearing. Option One permits him to act as a representative before the board in much the same way as the parents are already permitted to act. Under either option, the representative may or may not be an attorney, depending on the school board's choice in adopting its code. (The advantages and disadvantages of permitting legal counsel at the hearing are discussed in a monograph on student expulsions that may be obtained from the Institute of Government.)

SECTION 16. COMPELLING THE APPEARANCE OF WITNESSES

If the hearing board finds it necessary to have a witness appear before it and the witness refuses after being requested to appear, the hearing board may request the board of education to use the subpoena power granted to it by G.S. 115-32 to compel the presence of the witness.

Comment: Part of the problem of the presence of witnesses is dealt with in subsection 14(e). If a witness refuses to appear and the board finds it critical to the hearing that he testify, the board may petition the board of education to issue a subpoena under G.S. 115-32 on the basis that the matter at hand is one "which may lawfully come within the powers of the board and which, in the discretion of the board, requires investigation."

School boards have seldom used the subpoena power, and it is not clear that they can use it to compel the presence of a witness before the hearing board. But until the point is litigated and the use found improper, the school board may in good faith issue the subpoena authorized by G.S. 115-32 for this purpose.

SECTION 17. DISPOSITION OF THE CASE

(a) Actions of the Hearing Board

The hearing board shall reach its decision on whether the student violated a rule on serious misconduct by majority vote. The decision must be based solely on the evidence presented at the hearing and should state substantial findings of fact on which the board's decision rests. If no misconduct is found, the matter is terminated and no further action may be taken against the student.

When some misconduct is found, even if a rule on serious misconduct has not been violated, the board's report shall include a recommendation to the superintendent of schools concerning what action, if any, should be taken with respect to the student. The recommended action need not be the action suggested by the principal but shall not exceed the penalty he suggests. It may range from no action through the entire scope of counseling attempts and possible penalties including expulsion for the remainder of the school year. The recommendation should explain in terms of the needs of both the student and the school the reasons for the particular action recommended to the superintendent.

Minority views should be noted if the minority members so requests.

(b) Actions of the Superintendent

- Option One

If the hearing board finds that the student violated a rule on serious misconduct, the superintendent may apply any sanction he thinks warranted. If the superintendent directs a sanction more severe than that recommended by the hearing board, he shall send to the parents of the student and to the Convener an explanation of why he thought the recommended sanction to be inappropriate.

- Option Two

If the hearing board finds that the student has violated a rule on serious misconduct, the superintendent may decrease the penalty recommended but may not expel or suspend the student for over five school days unless such a penalty is recommended by the hearing board. The superintendent, however, may place requirements on the student intended to help him overcome dif-

ficulties with school work or to adapt to school requirements for student conduct.

Comment: In order to comply with the procedural requirements of due process the superintendent may not expel or impose a long-term suspension unless a hearing board finds the student to be guilty of the charged misconduct. (This assumes that the student does not waive his right to a hearing.) Once the hearing board has found a student to be in violation of a rule on serious misconduct, some school body or official must decide what action should be taken with respect to the student. Option One leaves this decision completely to the superintendent while Option Two limits the superintendent's power to expel or impose a long-term suspension to those instances when the hearing board recommends such a penalty. Option One, which gives the superintendent the authority to decide the penalty, is preferred because he has the ultimate responsibility for the continued operation of the school and should not be limited by a hearing board's recommendation when he thinks a student must be removed from the school for his misconduct.

There are risks, however, in leaving the decision to expel solely in the hands of the superintendent. Since he has approved the principal's request to seek expulsion or long-term suspension, he probably has reached at least a tentative conclusion that the student should be expelled if found guilty. He may well not be present at the hearing when the testimony is received [he may be present; see Section 15(a)], and he will be directly involved in the case as an administrator. Therefore, the hearing board's collective judgment on whether such a severe sanction should be imposed may often be better than the superintendent's. Furthermore, application of such a severe penalty will appear fairest to the entire school community when it follows a recommendation of the hearing board.

It is further noted with respect to Option Two that it does not limit the superintendent solely to the hearing board's recommendation when misconduct is found. When he thinks the recommended penalty is inappropriate or too severe, he may reduce the penalty. If he thinks that supplemental requirements are necessary, such as requiring the student to work with a school psychologist on his behavior problem, he can impose them.

SECTION 18. APPEAL

The student may appeal to the board of education [or special

district level review board] a penalty by the superintendent. The penalty need not be postponed pending the outcome of the appeal. Such an appeal must be on the record made in the hearing, and new evidence will be admitted only to avoid a substantial threat of unfairness. The board of education may alter the superintendent's disposition of the situation only if it finds the decision clearly erroneous.

An adverse decision to the student by the board of education may be appealed to a court of law.

Comment: G.S. 115-34 authorizes an appeal to the board of education "from the decision of all school personnel." This statute, enacted in 1923 at a time when students and parents were less inclined to appeal decisions of school personnel, has a potential for swamping the school board with more appeals than it can handle. A large school system that contemplates many appeals may find it desirable to establish a special district-level review board or to restrict appeals to the school board to appeals of penalties that exceed a suspension of five school days. If the school board decides to use a special review board or to permit appeals only when a severe penalty has been imposed, a special legislative act excepting the board of education from the application of G.S. 115-34 is necessary.

Appeals to a court of law are authorized by G.S. 115-34 and G.S. 143-307. G.S. 115-34 provides for an appeal from the decision of the board of education to the superior court in any action by the board "affecting one's character or right to teach." G.S. 143-306 et seq. authorizes an appeal to a court of law after a final administrative decision by the school system and sets out the procedure for such appeals.

SECTION 19. CHRONIC OFFENDER

If a student has been suspended for a total of ten school days during a semester, any further short-term suspension by the principal must be followed as soon as possible by a hearing board review of the student's record, including the principal's findings and action in relation to the latest misconduct, and of any explanation, mitigating circumstances, or defenses that the student or his parents desire to make. A report should be made to the principal with a copy to the superintendent stating the board's findings as to the facts of the latest incident and its recommendations, if any, about dealing with the student in the future.

Comment: When a student's behavior has prompted a series of short-term suspensions during a relatively short period of time, it would seem that the student and the school have a problem that is not likely to be solved by further short-term suspensions. When a case like this arises, it should be helpful for the hearing board to review the student's entire record as well as the recent incident and to hear any suggestions that the student, his parents, or the principal might make for resolving the problem.

This conference should be as informal as possible, not following the procedures for a regular hearing. At its conclusion, the board should discuss the student's case in private and submit a report to the principal with a copy to the superintendent summarizing their findings and making any recommendations they think useful.

SECTION 20. AUTOMATIC REVIEW

If a student is expelled from school during the first semester for the remainder of the school year, his expulsion must be automatically reviewed by the hearing board before the beginning of the second semester unless the expulsion originally took effect within three weeks of the beginning of the second semester.

This review may lead to a recommendation that the student be reinstated for the second semester.

Comment: The primary purpose of long-term suspension or expulsion is to protect the school's total educational process. The student separated from the school is practically never helped by the separation. He should be reinstated as soon as it can be determined that he can profit by readmission and not pose a substantial threat to the school. This section provides for a review of the expulsion to insure that the school recognizes its continuing obligation to the student and its responsibility for assisting in his rehabilitation.

PART III

Removal of Dangerous Students

(1) Any student who has a dangerous communicable disease that poses a substantial threat to the health or safety of the school community may be removed from school by the principal on the approval of the superintendent until he no longer poses such a threat.

(2) [optional] A student who has been charged with the unlawful selling of narcotics [or other such serious violation of the criminal law] may be removed from the school by the principal upon the approval of the superintendent when it is necessary to protect other students or avoid substantial disruption to school operations. The school must be able to show that the continued presence of the student endangers other students or would substantially disrupt school operations. As soon as the student no longer poses such a threat, he shall be reinstated.

Comment: Unlike the rules on serious student misconduct in Part I, these provisions are not designed for punishment, but are solely to protect other students in circumstances where such protection is clearly necessary. We have, therefore, made the removal of dangerous students a separate part of the code.

The second (optional) provision above is intended only as an example of what is possible and not as a recommended provision. It is an attempt to deal with the problem of the student who has been charged with a serious violation of the criminal law, such as unlawfully selling narcotics, and his immediate return to the school either would pose a substantial threat to other students or would likely cause substantial disruption to school operations because of the fear or intimidation that his presence creates for teachers or other students. Such situations will be rare and should be particularly described as in the optional subsection (2)

above. The burden is put on the school to demonstrate that the student's continued presence endangers other students.

[G.S. 130–87 through –93.1 requires that a child be immunized against diphtheria, tetanus, whooping cough, smallpox, and infantile paralysis before he can be admitted to school.]

Conclusion

Though these rules and procedures are provided only as a guide and a starting point for the local school board in developing its own policies, we emphasize that they form a unitary code. Care should be exercised in using one rule or one section and not another, or in discarding a comment, or in varying time sequences, or in making other modifications in this code to be sure that all consequences of the change are understood and intended. We urge board members to attempt to understand fully this code or any other before they form their opinion about it and set out to write their own.

Once you have adopted clear rules on student misconduct and orderly and precise procedures for handling it, you will have done much to assure the fair and orderly progress of the school's work.

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